**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Connect America Fund | ) | WC Docket No. 10-90 |
| | ) | |
| Petition of USTelecom from Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks | ) | WC Docket No. 14-192 |
| | ) | |
| Lifeline and Link Up Reform and Modernization | ) | WC Docket No. 11-42 |
| | ) | |
| Telecommunications Carriers Eligible for Universal Service Support | ) | WC Docket No. 09-197 |



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SEP - 9 2015
Federal Communications Commission
Office of the Secretary

**COMMENTS OF AT&T**

The Commission's work on eligible telecommunications carrier (ETC) reform is far from complete. Last December the Commission took a half-measure, issuing a final rule providing price cap carrier ETCs with limited relief from unfunded ETC service obligations.[1] In establishing that final rule, the Commission ignored the voluminous record filed by AT&T Services, Inc. (AT&T) and other parties demonstrating why comprehensive ETC reform is necessary. Instead, the Commission relied on four pages of comments filed by two parties asserting that the reform advocated by AT&T, among others, would "give insufficient consideration to the important role that Congress has given the states in defining service areas

[1] 47 C.F.R. § 54.201(d)(3).

and designating ETCs."[2] However inadequate a response, at least the Commission offered one sentence for rejecting AT&T's requests for commonsense ETC reform. It failed to do even that when it directed price cap carriers to continue providing Lifeline discounts throughout their vast service territories. There, the Commission simply mustered a "*Cf.*" footnote, citing (but ignoring) comments by AT&T, CenturyLink, and WISPA urging the Commission to de-link Lifeline from the ETC designation and to make Lifeline participation voluntary.[3] In the *CAF II Order*, the Commission gave no indication that it was still considering further reforms.

AT&T appealed this part of the *CAF II Order* to the United States Court of Appeals for the District of Columbia Circuit because the Commission's final rule, which maintained ETC designations and obligations in areas where price cap carrier ETCs cannot or do not receive high-cost support under the Commission's new rules and mechanisms, violates several provisions of the Communications Act.[4] Moreover, its refusal to consider and respond to comments that it solicited on ETC and Lifeline reform was arbitrary and capricious, violating the Administrative Procedure Act.

Instead of addressing the substance of AT&T's appeal, the Commission asked the Court to defer consideration of the appeal so that the Commission could "complete its work" on ETC and Lifeline reform.[5] The Commission informed the Court that "the issues and arguments that

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[2] *Connect America Fund*, WC Docket No. 10-90, Report and Order, 29 FCC Rcd 15644, ¶ 67 & n.153 (2014) (*CAF II Order*).

[3] *Id.* at ¶ 70 & n.158.

[4] Brief of Petitioner AT&T Inc., AT&T Inc. v. FCC, No. 15-1038 (D.C. Cir. filed June 15, 2015), 2015 WL 3818680.

[5] Motion of the FCC to Hold Case in Abeyance at 17, AT&T Inc. v. FCC, No. 15-1038 (D.C. Cir. filed July 2, 2015) (FCC Motion).

AT&T has raised in its petition are all currently under consideration in multiple other proceedings – the USTelecom forbearance proceeding, the universal service high-cost rulemaking proceeding, and (for the proposal to separate a carrier's ETC status and Lifeline obligations) the Lifeline rulemaking proceeding."[6] Furthermore, it assured the Court that its *CAF II Order* did not "decide[] *any* of the issues that AT&T raises in its petition for review."[7] The D.C. Circuit recently granted the Commission's abeyance request, giving the Commission until January 2016 to decide the issues AT&T raised in its appeal and that the Commission represented were in active consideration in other proceedings.[8]

At about the same time it sought abeyance (and perhaps protesting a bit much), the Wireline Competition Bureau (Bureau) issued a Public Notice asking parties to "refresh the record on the [ETC and Lifeline] issues that remain pending" in three open proceedings following the *CAF II Order*.[9] It is to this request AT&T now submits comments in response:

AT&T believes the record is sufficiently fresh. The comment cycles of two of the three proceedings closed relatively recently and the comment cycle of the third, the *Lifeline FNPRM*,

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[6] *Id.* at 17-18.

[7] Reply of FCC in Support of Motion to Hold Case in Abeyance at 1, AT&T Inc. v. FCC, No. 15-1038 (D.C. Cir. filed July 27, 2015) (FCC Reply Motion) (emphasis in original).

[8] Order, *AT&T, Inc. v. FCC*, No. 15-1038 (D.C. Cir. Sept. 3, 2015) (per curiam).

[9] *Wireline Competition Bureau Releases List of Census Blocks Where Price Cap Carriers Still Have Federal High-Cost Voice Obligations & Seeks to Refresh the Record on Pending Issues Regarding Eligible Telecommunications Carrier Designations and Obligations*, WC Docket Nos. 10-90, 14-192, 11-42, and 09-197, Public Notice, DA 15-851, ¶¶ 4-5 (rel. July 23, 2015) (*ETC Public Notice*) (citing the April 2014 Connect America Fund FNPRM , USTelecom's forbearance petition, and the Lifeline Second FNPRM).

is still open.[10] AT&T's arguments have not changed in the months that it filed comments in the two proceedings with the closed comment cycle and it looks forward to filing reply comments in the Lifeline proceeding later this month. Indeed, AT&T believes that the arguments comprehensively developed in previous comments — one set of which we attach for the Commission's convenience as Appendix A — continue to provide a clear path forward. For these reasons, AT&T sees little need to "refresh the record" by repeating the same legal and policy arguments that the Commission assured the Court it is "actively considering."[11]

AT&T also attaches to these comments maps for all twenty-one of AT&T's price cap carrier affiliates' service territories.[12] These maps make even clearer the obsolescence and unfairness of the price cap carrier ETC regime. The tan areas (labeled "CBs with Voice Forbearance") depict the census blocks where AT&T's price cap carrier affiliates receive no funding and limited relief from ETC voice service obligations; the red areas (labeled "Competitive Bidding-Only CBs") depict the census blocks that are ineligible for the so-called state-level commitment that the Commission offered to price cap carriers but where price cap carriers were not granted any forbearance; and the green areas (labeled "CAF II-Eligible CBs")

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[10] *See Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Order, DA 15-885 (rel. Aug. 5, 2015) (extending the reply comment filing date until September 30, 2015); *Pleading Cycle Established for Comments on United States Telecom Association Petition for Forbearance from Certain Incumbent LEC Regulatory Obligations*, WC Docket No. 14-192, DA 14-1585 (rel., Nov. 5, 2014) (establishing a comment cycle of December 5 and 22, 2014); 79 Fed. Reg. 39196 (July 9, 2014) (establishing an August 8 and September 8, 2014 comment cycle for the Connect America Fund FNPRM).

[11] FCC Reply Motion at 2 (notifying the Court that it is "actively considering AT&T's arguments here in pending administrative proceedings"). *See also ETC Public Notice* at ¶ 5 (informing parties that "[t]hese [ETC and Lifeline reform] issues remain pending to the extent originally raised in the rulemaking proceeding or the forbearance proceeding (or both).").

[12] *See* Appendix B.

depict census blocks that are eligible for CAF II funding, and where price cap carriers received no forbearance whether or not the state-level commitment was accepted.[13] And, of course, AT&T's price cap affiliates continue to have Lifeline obligations in *all* of the census blocks in their service territories.

It is apparent from the maps that AT&T's price cap carriers' service territories are vast and, in most cases, comprise census blocks that are scattered throughout the state. The tan-colored areas of the maps demonstrate that, in many states, much of these carriers' service territories are low-cost and/or competitively served and thus ineligible for high-cost support. Moreover, these tan-colored areas contain more than 90 percent of the population in AT&T's service territories. Therefore, AT&T remains subject to the Lifeline program's requirements and to unfunded state ETC mandates in areas in which the overwhelming majority of its customers live. Moreover, as the Commission is aware, data AT&T filed last year demonstrate that there are multiple Lifeline providers offering Lifeline-discounted service in every single AT&T wire center. The data also showed that few Lifeline customers actually want AT&T's Lifeline service. Instead, these consumers overwhelmingly prefer wireless Lifeline service. Thus, it is unnecessary to require any of AT&T's price cap carrier affiliates to continue participating in the Lifeline program.

The maps also show — in red — the census blocks where price cap carriers were ineligible for CAF II funding as part of the state-level commitment but where they nonetheless

[13] AT&T accepted the Commission's state-level commitment for CAF II funding in eighteen price cap carrier states and thus receives high-cost funding to provide the supported service in those CAF II-eligible census blocks. AT&T has included in this latter category extremely high-cost census blocks where price cap carriers were *not* offered any additional support to serve but where they are permitted to serve using their existing CAF II funds (and thus were included within the "green" areas). But, as explained below, in Missouri, Nevada, and Oklahoma, where AT&T declined the state-level commitment, AT&T remains subject to unfunded high-cost obligations.

continue to have ETC voice obligations and the obligation to participate in the Lifeline program. These census blocks are significant in number in some states and represent areas where price cap carriers continue to have unfunded federal ETC obligations until the competitive bidding process produces a CAF II recipient. But the Commission has not even established the rules for the competitive bidding process so these areas will remain unfunded until late 2016, at the earliest.

Finally, there are three states — Missouri, Nevada, and Oklahoma — in which AT&T did not accept the CAF II state-level commitment. After much analysis, AT&T concluded that, even with CAF II support, it is still uneconomic for it to deploy broadband facilities in the CAF II-eligible (green) areas in these states. AT&T receives no forbearance relief in the CAF II-eligible census blocks, and it will only receive limited forbearance relief to the extent some party bids and receives support to provide broadband service in the CAF II-eligible census blocks.[14]

The record is fresh. The conditions on the ground, and the reasons they need to change, are known. The Commission has the information it needs to act, which the Commission promised the D.C. Circuit it would do by January 4, 2016. While January 4, 2016 happens to be the date by which the Commission must act on USTelecom's forbearance petition or it is deemed granted, the Commission also committed to the Court that it would substantively "resolve" all of "the issues raised in AT&T's petition here," even if those issues are properly before the

[14] It also is worth noting that in one of these three states, Missouri, AT&T receives no high-cost support, and it receives only a small amount of legacy high-cost support in the other two states.

Commission in its pending rulemaking proceedings.[15] AT&T looks forward to continuing to work with the Commission on these important issues.

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[15] FCC Motion at 13.

# APPENDIX

# A

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of<br><br>Petition of USTelecom from Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks | )<br>)<br>)<br>)<br>)<br>) | WC Docket No. 14-192 |

## COMMENTS OF AT&T

AT&T Services, Inc., on behalf of its price cap carrier affiliates, supports USTelecom's request that the Commission forbear from section 214(e) in areas where a price cap carrier does not receive or elects not to take federal high-cost universal service support.[1] Section 214(e) of the Act establishes the eligible telecommunications carrier (ETC) framework and, pursuant to the universal service statute, only ETCs may receive federal high-cost support.[2] Granting this USTelecom request would relieve price cap carriers of their ETC obligations and designations in geographic areas where they do not receive federal high-cost support.[3] Over the years, AT&T

[1] Petition for Forbearance of the United States Telecom Association, WC Docket No. 14-192, at 60-73 (filed Oct. 6, 2014) (Petition); 47 U.S.C. § 214(e). These comments are responsive to Category 4.

[2] *See* 47 U.S.C. § 254(e) ("only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support."). AT&T has explained previously how the Commission has interpreted section 254 to permit non-ETC service providers to participate in its E-rate and Rural Health Care programs and how Congress explicitly permits the Commission to allow non-ETC providers to participate in Lifeline. *See* Attachment 1 (Comments of AT&T, WC Docket No. 10-90, at 8 & n.20 (filed Aug. 8, 2014) (AT&T CAF II Comments)). Thus, the ETC designation is necessary only for providers that obtain federal high-cost support.

[3] *See, e.g.*, Petition at 69, 73. It is our understanding that the Commission is scheduled to vote on an order addressing in part the Petition on December 11, 2014. *See* Commission Meeting Agenda Public Notice (rel. Dec. 4, 2014), *available at*, http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db1204/DOC-330849A1.pdf. While the Commission could – and, indeed, should – on its own motion forbear from applying section 214(e) obligations to price cap carriers in areas where they do not receive support, the Commission would violate

has filed numerous pleadings at the Commission that discuss this topic at length. Rather than repeating here all of the information and arguments AT&T has filed in other Commission dockets, AT&T attaches to these comments a few recent pleadings to ensure that the record on this aspect of the Petition is complete.

State commissions designated price cap carriers as ETCs throughout their service territories about seventeen years ago. They took this action despite the Commission's and the Federal-State Joint Board on Universal Service's admonition that ETC service areas covering large carriers' study areas could potentially violate section 254(f) of the Act by undermining the Commission's efforts to preserve and advance universal service.[4] Thus, for nearly two decades, AT&T's twenty-one price cap carrier affiliates have had federal and state ETC obligations everywhere they offer service, regardless of whether they receive any federal or state high-cost universal service support. And most of AT&T's price cap carrier affiliates receive inadequate or no high-cost support as a result of the Commission's previous high-cost support mechanism for non-rural carriers, which the United States Tenth Circuit Court of Appeals twice found to be fundamentally flawed.[5]

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the notice and comment provisions of the Administrative Procedures Act if it were to deny any aspect of the Petition <u>before</u> the comment cycle closes on December 22, 2014.

[4] *See, e.g.*, AT&T CAF II Comments at 11-13. Section 254(f) of the Act provides in relevant part that a "State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. . . A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms." 47 C.F.R. § 254(f).

[5] *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2003); *Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222 (10th Cir. 2005). The court's and carriers' concerns with this mechanism had not been satisfactorily addressed when the Commission announced in its 2011 *USF/ICC Transformation Order* that it was sidestepping the Tenth Circuit's last remand by scrapping altogether this mechanism. *Connect America Fund et al.*, WC Docket No. 10-90 et al., 26 FCC Rcd 17663, ¶ 128 & n.200 (2011) (*USF/ICC Transformation Order*), *aff'd* 753 F.3d 1015 (10th Cir. 2014) (explaining that it is "eliminat[ing] altogether the current [high-cost model support] and IAS mechanisms for price cap companies").

The ETC obligations include among other things, a requirement to offer voice service – i.e., the "supported service" – throughout the carrier's extensive ETC service area, and if the carrier receives any amount of high-cost support, no matter how small, it also must offer voice on a standalone basis throughout that area without regard to whether consumers desire such an offering.[6] Notwithstanding the fact that many price cap carriers, including most of AT&T's price cap carrier affiliates, did not receive *any* support that was designed to enable them to provide service in rural, high-cost areas, these carriers nonetheless have been required to maintain (and extend in some cases) facilities to provide voice service in areas where it is uneconomic to do so, including areas where other providers were already offering voice service. Such areas include locations where a developer or a building owner granted exclusive marketing rights and/or the exclusive right to sell video and Internet services to another provider. Other unfunded ETC service obligations include having to comply with state ETC requirements and participate in the Lifeline program.[7]

These obligations impose a significant cost on AT&T's price cap carrier affiliates. According to the Commission's cost model, it costs these AT&T affiliates approximately $1.8 billion/year to continue providing standalone legacy voice telephony service (or about $1 billion/year if one makes generous revenue assumptions).[8] But these affiliates receive just a

[6] *See USF/ICC Transformation Order* at ¶ 80.

[7] *See* AT&T Comments at n.37 (providing several examples of state-specific, unfunded ETC obligations). While Congress authorized the Commission to permit non-ETCs to participate in Lifeline, the Commission chose to link the ETC designation with mandatory Lifeline participation through its rules. For a number of years, AT&T and others have urged the Commission to de-link the two and make Lifeline participation voluntary. *See, e.g., id.* at 30-33.

[8] *See* Attachment 2 (Letter from Mary L. Henze, AT&T, to Marlene Dortch, FCC, WC Docket No. 10-90, at 2 (filed Nov. 19, 2014) (AT&T Nov. 19, 2014 *Ex Parte* Letter) (explaining how AT&T used the last version of the Connect America Model (CAM) – version 3 – that had fiber to the DSLAM to calculate the costs to continue providing voice service throughout its price cap carrier affiliates' ETC service areas and how it used location targets from the Commission's most recent version of the CAM)).

fraction of that amount – $176 million/year – in federal high-cost support. Moreover, this figure does not include the significant administrative expense associated with participating in the Lifeline program, which the Commission estimates is approximately $600 million/year for the industry.[9]

The Commission's existing ETC regime and the flawed legacy high-cost support mechanism that distributed inadequate support to price cap carriers have caused price cap carriers to divert capital dollars to maintain increasingly antiquated facilities in order to continue offering a service that consumers do not desire[10] instead of using their capital to expand broadband service to more consumers. The Commission's data supports this conclusion: Over 80% of the locations unserved by broadband in 2011 were in price cap carrier areas.[11] Not only has the unfunded ETC mandate adversely affected consumers residing in these areas by depriving them of broadband service, it also has imposed costs on all consumers through an increased burden on the high-cost fund that is necessary to close this "rural-rural divide."[12]

In its 2011 *USF/ICC Transformation Order*, the Commission appropriately reformed and refocused its high-cost support program in price cap carriers' service territories by, among other things, promising targeted funding for broadband deployment in eligible, high-cost areas to one entity per geographic area through its so-called Connect America Fund Phase II (CAF II) support mechanism. AT&T advocated for such reform and has supported the Commission's decision to

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[9] AT&T CAF II Comments at 32 & n.91.

[10] Petition at 63 (noting that 5% of households solely use legacy ILEC voice service whereas about 90% of households use wireless service).

[11] *USF/ICC Transformation Order* at ¶ 127.

[12] *Id.* at ¶ 7 ("a 'rural-rural' divide persists in broadband access . . . because the existing program fails to direct money to all parts of rural America where it is needed").

establish CAF II. However, at the time the Commission adopted sweeping reforms to its high-cost support mechanisms, it failed to reform its ETC regime. Specifically, the Commission failed to relieve price cap carriers of their ETC designations and federal carrier of last resort-like ETC obligations in areas where the carriers do not and cannot receive high-cost support or elect not to take such support. Once the Commission implements CAF II, in which the Commission identifies discrete areas that are eligible for support and limits support to just one recipient per area, price cap carriers' excessively large ETC service areas will be even more plainly in contravention of section 254(f) than they were in 1997. Such large and unfunded ETC designations also violate the Commission's competitive neutrality universal service principle[13] because they impose costly obligations only on price cap carriers. A non-price cap carrier is permitted to seek a CAF II ETC designation *after* the Commission selects it as a winning bidder in the CAF II competitive bidding process, ensuring that its ETC designated service area and associated obligations will be tailored precisely to the geographic area where it will actually receive support.[14] This, of course, is in contrast to AT&T's price cap carrier affiliates' situation, in which, under the current ETC framework, they must spend over $1 billion/year to continue providing legacy voice service in areas that are both below and above the CAF II cost benchmark.[15]

After CAF II is implemented, requiring price cap carriers to maintain such large ETC areas with the associated and unfunded service obligations also violates Congress's requirement

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[13] *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 12 FCC Rcd 8776, ¶¶ 43-55 (1997) (requiring that the Commission's universal service policies "be competitively neutral . . . [and] neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.").

[14] AT&T CAF II Comments at 16-17.

[15] *See* AT&T Nov. 19, 2014 *Ex Parte* Letter at 2.

that the Commission's universal service support mechanisms provide "sufficient" support, as well as Congress's requirement in section 706 that the Commission remove barriers to broadband infrastructure investment. As discussed above, the Commission's ETC regime has created a drag on price cap carriers' investment in broadband infrastructure because it has forced these carriers to spend substantial capital dollars to maintain infrastructure in order to provide a telecommunications service – POTS – that has no relevance in the 21st Century.

Forbearance from enforcement of section 214(e) in areas where a price cap carrier receives no federal high-cost support plainly meets all of the criteria of section 10.[16] First, requiring one class of carrier – a price cap carrier – to provide voice service as an ETC in areas where there is at least one other unsubsidized provider of voice service is unnecessary to ensure just and reasonable rates and to protect consumers.[17] Not only do most consumers have ten or more voice provider options,[18] they have embraced these competitive offerings. Consumers have overwhelmingly rejected price cap carriers' legacy voice service offerings in favor of wireless voice service and, to a lesser degree, VoIP service that is frequently provided by non-price cap carrier entities.[19]

The voice market is – and has been for years – irreversibly open to competition. This is true even in extremely high-cost areas as demonstrated by two case studies that AT&T performed several months ago. AT&T selected two representative states (Illinois and Louisiana) with contrasting profiles where it provides service as a price cap carrier. Among other things, it

[16] 47 U.S.C. § 160 (hereinafter referred to as "section 10").

[17] *Id.*, § 160(a)(1), (2).

[18] *See* Local Telephone Competition: Status as of December 31, 2012, Industry Analysis and Technology Division, Wireline Competition Bureau, at Table 10 (November 2013) (finding that 92% of households reside in zip codes with at least ten or more CLEC and/or non-ILEC VoIP providers).

[19] Petition at 63; AT&T Comments at 3.

geocoded every consumer POTS customer in these two states and determined which customers reside in CAF II-eligible and Remote Areas Fund (RAF)-eligible census blocks. It also determined the percentage of households in these areas that obtain Lifeline service from AT&T's price cap carrier affiliates. These case studies of two very different states show remarkable similarities: Voice competition is thriving in both urban and rural areas and consumers are readily choosing those competitive offerings. Thus, there can be no question that continuing to require price cap carriers to be ETCs or to mandate Lifeline participation is unnecessary to ensure that these carriers' rates are just and reasonable or to protect consumers, including Lifeline customers. The hyper-competitive voice market will guarantee that remains the case post-forbearance.

AT&T's analysis also dispels any myth that Lifeline competitors are predominantly in urban areas, leaving rural Lifeline-eligible consumers with only the price cap carrier as their Lifeline provider. According to AT&T's data, even in the RAF-eligible areas, only about half of one percent of households obtains Lifeline service from AT&T's price cap carrier affiliate. To put an even finer point on that, of the estimated 113 to 350 households that receive Lifeline benefits in RAF-eligible census blocks in Illinois, only 12 of them receive that benefit from AT&T Illinois.[20] In Louisiana, of the estimated 176 to 272 households that receive Lifeline benefits in RAF-eligible census blocks, only 7 of those customers receive that benefit from AT&T Louisiana.[21] The Lifeline figures for CAF II-eligible areas are similar in proportion to

[20] *See* Attachment 3 (Letter from Mary L. Henze, AT&T, to Marlene Dortch, FCC, WC Docket Nos. 10-90, 11-42, at 4 (filed Sept. 15, 2014)).

[21] Attachment 4 (Letter from Mary L. Henze, AT&T, to Marlene Dortch, FCC, WC Docket Nos. 10-90, 11-42, at 1 (filed Oct. 14, 2014)).

the RAF figures. These results are not surprising because there are a minimum of 6 other ETCs that offer Lifeline in AT&T's wire centers in Illinois and 18 other ETCs in Louisiana.[22]

The Commission's, industry members' and analysts' data all support the conclusion that consumers, including Lifeline consumers, will not lose voice service if the Commission forbears from section 214(e) in geographic areas where a price cap carrier receives no federal high-cost support as there are ample competitive offerings. Moreover, even though a price cap carrier may be an ETC in only those areas where it accepts high-cost support if the Commission grants USTelecom's request, which it should, that carrier is by no means free to cease offering POTS in such areas. The authorization to cease offering an interstate telecommunications service is only provided through the section 214 discontinuance process. Before a carrier could discontinue such a service, the Commission would have to be satisfied that the carrier seeking discontinuance is offering a replacement service and/or there are alternative providers offering service in the same area. This backstop ensures that no customer will lose access to voice service and thus it is unnecessary to maintain price cap carrier ETC designations in order to protect consumers.

The last prong of section 10(a), requiring the Commission to determine that forbearance is in the public interest, also is satisfied. There is no question that every dollar a price cap carrier spends to maintain its rapidly obsolescing facilities and services is one less dollar it could spend on broadband deployment. As we have discussed above and in previous filings, the ETC regime has forced price cap carriers to spend billions to continue providing legacy voice services that consumers are abandoning in droves, and that diversion of capital has caused broadband

[22] *See* Attachments 3 & 4.

deployments in price cap carriers' service territories to suffer.[23] The Commission itself previously found that "regulation that constrains incentives to invest in and deploy the infrastructure needed to deliver broadband services is not in the public interest."[24] Additionally, based on facts similar to those presented in the Petition, the Commission determined that forbearing from section 214(e)'s ETC service area requirements applicable to rural carrier study areas was in the public interest so that Mobility Fund Phase I participants would not "be required to take on *unsupported ETC obligations* in portions of rural carriers' study areas—areas that may not be eligible for support or for which they may not win support."[25] There is no policy or legal justification for not applying this precedent to price cap carriers.

Finally, it is important for the Commission to forbear not only from section 214(e) ETC <u>obligations</u> in areas where a price cap carrier receives no support but also to forbear from the section 214 ETC <u>designation</u> in such areas. While the section 10(e) of the Act clearly prohibits state commissions from "continu[ing] to apply or enforce any provision of this chapter that the Commission has determined to forbear from applying under subsection (a) of this section,"[26] some state commissions may nonetheless attempt to impose state-specific ETC obligations on price cap carriers in areas where they receive no federal high-cost support. Forbearing from the section 214(e) ETC designation ensures that this possibility, which would be

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[23] *See also* Petition at 68 (quoting Chairman Wheeler who stated that "the majority of capital investments made by U.S. telephone companies from 2006 to 2011 went toward maintaining the declining telephone network, despite the fact that only one-third of U.S. households use it at all.").

[24] Petition at 68 (quoting *Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Its Broadband Services*, 22 FCC Rcd 18705, ¶ 49 (2007)).

[25] *Connect America Fund et al.*, WC Docket 10-90 et al., Second Report and Order, 27 FCC Rcd 7856, ¶ 15 (2012) (*Mobility Fund Phase I ETC Forbearance Order*) (emphasis added).

[26] 47 U.S.C. § 160(e).

at odds with the Commission's intent and section 254(f), could not occur. Furthermore, such Commission action would be consistent with the Commission's decisions in its *Mobility Fund Phase I ETC Forbearance Order* and its recent *CAF II Report and Order* where the Commission permitted Mobility Fund and CAF II competitive bidding participants to tailor their ETC service areas to just those geographic areas where they will receive support.[27]

For the reasons provided above and in the attachments to these comments, AT&T respectfully requests that the Commission grant USTelecom's request that the Commission forbear from applying section 214(e) in areas where price cap carriers receive no federal high-cost support.

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[27] *Mobility Fund Phase I ETC Forbearance Order* at ¶ 15; *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 14-54, ¶ 43 (rel. June 10, 2014).

# ATTACHMENT

# 1

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

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|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Connect America Fund | ) | WC Docket No. 10-90 |
| | ) | |
| Universal Service Reform – Mobility Fund | ) | WT Docket No. 10-208 |
| | ) | |
| ETC Annual Reports and Certifications | ) | WC Docket No. 14-58 |
| | ) | |
| Establishing Just and Reasonable Rates for Local Exchange Carriers | ) ) | WC Docket No. 07-135 |
| | ) | |
| Developing a Unified Intercarrier Compensation Regime | ) ) | CC Docket No. 01-92 |

# COMMENTS OF AT&T

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August 8, 2014

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## I. INTRODUCTION

Congress created the Federal Communications Commission in its Communications Act of 1934 for the purpose of making available to all people of the United States access to communication services with adequate facilities at reasonable charges.[1] In other words, the reason for the Commission's existence is to promote universal service. Since becoming Chairman last November, Chairman Wheeler has spoken on several occasions about the importance and the enduring values of the "Network Compact: universal service, public safety, competition and consumer protection."[2] Virtually all parties agree that these values should remain the focus of the Commission's universal service policies. But the ways in which the Commission can and should meet those objectives must evolve to reflect the dramatic changes in the marketplace since Congress opened all telecommunications markets to competition in the Telecommunications Act of 1996 (1996 Act).

Prior to 1996, the Network Compact reflected the view that there should be "One Policy, One System and Universal Service," with that "one system" being the Bell system.[3] In other words, the Network Compact was predicated on the assumption that telecommunications was a natural monopoly, and that policymakers could best promote social welfare and thus the public interest by granting the Bell System and independent telephone companies franchise monopolies. These monopolies guaranteed them a reasonable return on their investment in the Network in exchange for a commitment to offer affordable, basic voice telephone services (i.e., "Plain Old

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[1] 47 U.S.C. § 151.

[2] Statement of Chairman Thomas E. Wheeler, *Technology Transitions et al.*, GN 13-5 et al., Order, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, Order and Further Notice of Proposed Rulemaking, Proposal for Ongoing Data Initiative, FCC 14-5 (2014).

[3] *See* Peter W. Huber, Michael K. Kellogg, & John Thorne, Federal Telecommunications Law 12 (2d. ed. 1999) (noting that this was AT&T's slogan beginning in 1908).

Telephone Service" or "POTS") to all Americans. The Network Compact thus established a quid pro quo that benefitted all concerned.

This regime was enormously successful in encouraging deployment of basic voice telephone services to the vast majority of Americans, including those living in remote and other high-cost areas. But, it did little to encourage innovation and investment in new technologies. And, as a consequence, basic voice services available toward the end of the $20^{th}$ Century were little different from those offered at the beginning the century.

In the 1960s and '70s, the first cracks in the Network Compact edifice appeared as the Commission (in some cases, led by the courts) opened segments of the telecommunications markets to competition – first for CPE and then for interexchange services. By 1996, Congress, regulators and policy makers generally agreed that telecommunications no longer was a natural monopoly (if it ever was), and thus opening all communications markets to competition would better serve the American people by encouraging innovation and investment, while ensuring that consumers would continue to receive service at affordable rates. At the same time, Congress recognized that competition would eliminate the implicit subsidies (from urban to rural, business to residential, and long distance to local) on which incumbent telephone companies had relied to keep rates for basic local telephone services – particularly in rural and other high cost areas – affordable. Consequently, it directed the Commission and the states in the 1996 Act to adopt universal service policies and support mechanisms to replace such subsidies with explicit support to ensure that all Americans would benefit through access to advanced telecommunications and other services at affordable rates. But, while the Commission successfully opened all telecommunications markets to competition, it failed to adopt universal service support mechanisms to explicitly replace the implicit subsidies in urban, business and long distance rates (at least for price cap carriers), which predictably evaporated as consumers switched to lower priced services offered by competitive providers that were not required to (and thus did not) serve high-cost customers.

In the eighteen years since passage of the 1996 Act, the communications ecosystem has undergone a complete transformation from the POTS monopoly model. When President Clinton signed the 1996 Act into law, 94 percent of U.S. households subscribed to POTS provided by an incumbent local telephone company and the remaining 6 percent did without any phone service.[4] At the end of 2013, that number had decreased to 25 percent, with only 5 percent of U.S. households subscribing only to POTS.[5] The vast majority of Americans have switched to competitive alternatives, including wireless, cable-provided VoIP, and over-the-top VoIP services. In addition, the percentage of U.S. households that do not subscribe to any interconnected voice service is 2.5 percent.[6]

There is no question that today consumers have universal access to communications services (including broadband),[7] in most areas from multiple sources –both wireless and wireline. For the most part, these multiple, competitive sources have developed in response to market demand, not regulatory compulsion. Indeed, the most popular voice service among

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[4] Anna Maria Kovacs, *The New Network Compact: Consumers Are In Charge*, at 10, Internet Innovation Alliance (July 2014), *available at* http://internetinnovation.org/images/uploads/IIA_A_New_Network_Compact_071714_Report.pdf (Kovacs Study).

[5] *Id.* at 11.

[6] *Id.*

[7] *Id.* at 15 (citing a Pew Report showing that, as of 2013, 70 percent of adults had fixed broadband access from home, which increases to 80 percent when access via smartphone is included).

consumers – wireless – is also the least regulated, while the least popular service (and the one consumers are abandoning in droves) – POTS – is the most heavily regulated.[8]

Nonetheless, there remain corner cases: discrete geographic pockets of the United States where consumers have fewer competitive alternatives, and lack access to broadband altogether. It is in these areas where market forces alone are insufficient to incent private investment to provide consumers access to next generation services that the Commission's high-cost universal service programs should be focused. To its credit, the Commission recognized as much in its seminal 2011 *USF/ICC Transformation Order*.[9] The Commission created the Connect America Fund (CAF) in this 2011 order, the purpose of which was to target federal high-cost dollars to areas unserved by broadband service. AT&T had advocated for years for this reform and it supports the Commission's decision to repurpose its legacy high-cost mechanisms from supporting voice, which is ubiquitously available, to supporting broadband deployment in eligible, high-cost areas. As it is about to implement the centerpiece of its universal service reforms – CAF Phase II (CAF II), which will provide up to $1.8 billion/year in support to providers that will offer broadband service in Commission-identified eligible areas – the Commission must address a holdover of its prior high-cost regime, the eligible telecommunications carrier (ETC) rules. Under its prior rules, carriers were designated as ETCs on a study area-wide basis – regardless of whether they actually received any support for serving high-cost areas through the Commission's high-cost program. The rules thus imposed unfunded mandates on price cap carriers to continue offering service to all customer locations in such areas

[8] *Id.* at 11-13. These data also show that providers of VoIP service, a service that also is regulated less than POTS, are increasing their market share year-over-year at the expense of POTS providers.

[9] *Connect America Fund et al.*, WC Docket No. 10-90 et al., 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*).